

NOV 12 2019



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

SAC FUND II 0826, LLC,

Plaintiff,

-against-

BURNELL'S ENTERPRISES, INC., AMERICAN
BUG CO., INC., a/k/a AMERICAN BUG
COMPANY, INC., RONALD BASSETT as
EXECUTOR OF THE ESTATE ADELL D.
BASSETT, RONALD BASSETT, individually,
NEW YORK CITY DEPARTMENT OF
FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
AMERICAN EXPRESS CENTURION BANK,
and "JOHN DOE NO. 1" to "JOHN DOE NO.
XXX," inclusive, the last thirty names being
fictitious and unknown to plaintiff, the persons or
parties intended or corporations, if any, having or
claiming and interest in or lien upon the premises
described in the complaint,

Defendants.

MEMORANDUM AND ORDER

18-cv-3504 (ENV) (PK)

VITALIANO, D.J.

Plaintiff SAC Fund II 0826, LLC (the "Fund") filed this action on June 14, 2018 against defendants Burnell's Enterprises, Inc. ("Burnell's"), American Bug Company, Inc. ("American Bug"), Ronald Bassett, individually and as the Executor of the Estate of Adell D. Bassett, the New York City Department of Finance ("DOF"), the New York City Environmental Control Board ("ECB") and American Express Centurion Bank ("American Express") to foreclose a mortgage encumbering four separate properties located in St. Albans and Jamaica, New York. Compl., Dkt. 1. None of the defendants have appeared or have otherwise responded to the

complaint. The Clerk entered certificates of default against all defendants, except Ronald Bassett, on September 12, 2018, but did enter a certificate of default against him on September 26, 2018. Entry of Default, Dkts. 17, 21.

The Fund then filed a motion for default judgment on October 10, 2018, along with a request for leave to submit both evidence as to the amounts currently due and owing to it and a proposed Judgment of Foreclosure and Sale, which was respectfully referred to Magistrate Judge Peggy Kuo for a Report & Recommendation (“R&R”). Motion for Default Judgment, Dkt. 22.

On September 7, 2019, Judge Kuo issued her R&R, recommending that the motion for default judgment be granted in part and denied in part. R&R, Dkt. 32, at 15. Specifically, Judge Kuo carefully determined that default judgment was warranted against Burnell’s, American Bug, Ronald Bassett and American Express, but recommended that the motion be denied with respect to ECB and DOF¹ because the allegations in the complaint did not meet the standard of particularity required to establish a claim against a city agency.² *Id.* at 10–13. Judge Kuo also recommended that the Fund be permitted to submit evidence to establish the amounts currently due and owing to it and a proposed Judgment of Foreclosure and Sale. *Id.* at 15. Notice of time

¹ Additionally, Judge Kuo recommended that “John Doe No. I to John Doe No. XXX,” who were never identified or served, be dismissed from the case. R&R at 1 n.1.

² Judge Kuo also noted that ECB was not properly served, and should be dismissed from the case for this reason. R&R at 8–9. If the Fund intends to continue to pursue ECB in this action, it should address the concern raised by Judge Kuo.

to object to the R&R was given. *Id.* No party has filed an objection within the prescribed time to do so.³

Discussion

Where no party has objected to a magistrate judge's report and recommendation, clear error review applies. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). Having carefully reviewed Judge Kuo's R&R in accordance with this standard, the Court finds it to be correct, well-reasoned and free of any clear error. The Court, therefore, adopts it, in its entirety, as the opinion of the Court.

Conclusion

For the foregoing reasons, the R&R is adopted, in its entirety, as the opinion of the Court. The Fund's motion for default judgment is granted to the extent that default judgment shall be entered against Burrell's, American Bug, Ronald Bassett, in both capacities and American Express, and leave is also granted to permit the Fund to submit evidence to Judge Kuo to establish the amounts currently due and owing to it, along with a proposed Judgment of Foreclosure and Order of Sale. The motion as to DOF and ECB is denied, with leave to replead as to both, and, in the case of ECB, to re-serve or provide proof of proper service. The action against the John Doe defendants is dismissed without prejudice.

³ The record reflects that, on September 9, 2019, the Fund served defendants with a copy of the R&R at their last known residence or business address. Certificate of Service, Dkt. 33.

So Ordered.

Dated: Brooklyn, New York
October 31, 2019

s/ENV

ERIC N. VITALIANO
United States District Judge